

1 GANG, TYRE & BROWN
BRUCE M. RAMER
2 STANLEY P. GOLD
6400 Sunset Building
3 Los Angeles, California 90028
(213) 463-4863
4 and
ROSENFELD, MEYER & SUSMAN
5 ALLEN E. SUSMAN
STEPHEN A. KROFT
6 9601 Wilshire Blvd., Suite 444
Beverly Hills, California 90210
7 (213) 271-9144

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1 place of business in Los Angeles County, California.

2

3 3. At all times herein mentioned, defendant RKO
4 General, Inc. ("RKO") was and now is a corporation organized
5 and existing under and by virtue of the laws of the State of
6 Delaware, qualified to do business in the State of California
7 and transacting business and having its principal place of
8 business in Los Angeles County, California. Prior to the
9 date hereof, RKO has succeeded to all the rights of its
10 predecessor corporation RKO Radio Pictures, Inc.

11

12 4. At all times herein mentioned, defendant
13 Dino DeLaurentiis Corporation (hereinafter "DeLaurentiis")
14 was and now is a corporation organized and existing under
15 and by virtue of the laws of the State of Delaware, qualified
16 to do business in the State of California, and transacting
17 business and having its principal place of business in Los
18 Angeles County, California.

19

20 5. Defendant Richard Cooper is the son of Merian
21 C. Cooper. Merian C. Cooper was one of the writers of the
22 novel entitled "King Kong" as hereinafter described.
23 Universal is informed and believes and on that ground
24 alleges that Richard Cooper is a resident of San Diego
25 County, California.

26

27 6. Universal and its subsidiary and affiliated
28 corporations are engaged in the financing, production and
29 distribution of theatrical and television motion pictures.

30

31 7. Edgar Wallace and Merian C. Cooper wrote the
32 King Kong story. It has been published and copyrighted as

1 follows:

2 7.1 A two-part serialization entitled "King
3 Kong" by Edgar Wallace appeared in the February, 1933,
4 and March, 1933, issues of "Mystery Magazine" (the
5 "Mystery Magazine serialization"). The Mystery
6 Magazine serialization was not separately copyrighted.
7 The February, 1933, issue of "Mystery Magazine" carried
8 a copyright notice as follows: "Copyright, 1933, by
9 Tower Magazines, Inc."; copyright registration of
10 this issue was made by Tower Magazines, Inc. under
11 Entry No. B:176982, showing a publication date of
12 December 20, 1932. The March, 1933, issue of
13 "Mystery Magazine" was copyrighted by Tower Magazines,
14 Inc. under Entry No. B:187893, showing a publication
15 date of January 23, 1933. Neither copyright was re-
16 newed and, accordingly, each has expired.

17
18 7.2 A novel entitled "King Kong" (the "King
19 Kong novel") conceived by Edgar Wallace and Marian
20 C. Cooper and novelized by Delos W. Lovelace was
21 published by Grosset & Dunlap, Inc., a corporation,
22 and Grosset & Dunlap, Inc. applied for and received
23 a certificate of copyright in the King Kong novel,
24 with the following registration number and registra-
25 tion date: A:58583, December 29, 1932 (the "Grosset
26 & Dunlap copyright").

27
28 7.3 After publication and registration of the
29 Mystery Magazine serialization and King Kong novel,
30 RKO published (i.e. released) and registered for
31 copyright a motion picture photoplay entitled
32 "King Kong" (the "King Kong photoplay") with the

1 following copyright registration number and registra-
2 tion date: LP:3794, February 24, 1933. RKO further
3 applied for and received a federal statutory renewal
4 copyright in the King Kong photoplay with the
5 following federal renewal copyright registration
6 number and registration date: R:267274, December
7 5, 1960. RKO claims to have acquired the exclusive
8 right to produce the King Kong photoplay from Edgar
9 Wallace and Merian C. Cooper (the "Wallace/Cooper
10 license").
11

12 Material appearing for the first time in either
13 the Mystery Magazine serialization or the King Kong novel
14 is hereafter referred to as "Old Material". Material which
15 did not appear in the Mystery Magazine serialization or the
16 King Kong novel but which first appeared in the King Kong
17 photoplay is hereafter referred to as "New Material".
18 Substantially all of the material in the King Kong photo-
19 play is Old Material.
20

21 8. Edgar Wallace died February 10, 1932, prior
22 to publication and copyrighting of either the Old Material
23 or the New Material.
24

25 9. The Grosset & Dunlap copyright in the King Kong
26 novel expired on December 28, 1960 without any action on the
27 part of Grosset & Dunlap, Inc. to renew any rights therein.
28 Within the year prior to expiration of the Grosset & Dunlap
29 copyright, Patricia Marion Caldecott Frere ("Frere"),
30 daughter of Edgar Wallace, filed an application for renewal
31 of the Grosset & Dunlap copyright (claiming as the pro-
32 priator of a posthumous work) and a renewal copyright

1 certificate (the "Frere renewal copyright") was issued
2 to her on February 2, 1960, with the following identifica-
3 tion number: R:251390. A copy of the Frere renewal copy-
4 right is attached hereto as Exhibit "1".

5

6 10. Universal is informed and believes and on
7 that ground alleges that Frere assigned all of her right,
8 title and interest in and to the Frere renewal copyright
9 to Merian C. Cooper in or about September, 1964, pursuant to
10 written assignment (the "Frere/Cooper assignment"). The
11 Frere/Cooper assignment was filed with the Register of
12 Copyrights on October 16, 1964, and a copy thereof is
13 attached hereto as Exhibit "2". Merian C. Cooper died
14 April 21, 1973, a resident of San Diego County, California.
15 He was survived by his widow, Dorothy Cooper, and by his
16 son, the defendant Richard Cooper. On August 12, 1975,
17 Dorothy Cooper quitclaimed all of her right, title and
18 interest in and to the Frere renewal copyright to Richard
19 Cooper, a copy of which is attached hereto as Exhibit "3".

20

21 11. The Frere renewal copyright is invalid and
22 of no force or effect in that at the time Frere filed the
23 renewal copyright application Frere was not the copyright
24 proprietor of the Grosset & Dunlap copyright, nor did she
25 have the right to renew such copyright. Accordingly, since
26 no action was taken by a party entitled thereto to renew
27 the rights, if any, under the Grosset & Dunlap copyright,
28 all material contained in the King Kong novel (i.e., the Old
29 Material) is in the public domain and not protected by a
30 federal statutory copyright. Moreover, since no action was
31 taken by anyone to renew the copyright in the Mystery
32 Magazine serialization, all material contained therein is

1 in the public domain. Thus, the Old Material in its entirety
2 is in the public domain and not protected by a federal
3 statutory copyright.

4
5 12. RKO claims to have the sole and exclusive
6 right to produce, sell, distribute and exhibit, and to
7 license to others the right to produce, sell, distribute
8 and exhibit motion picture photoplays which are based upon
9 either the Old Material or the New Material. Universal is
10 informed and believes and on that ground alleges that RKO
11 has entered into an agreement with DeLaurentiis pursuant
12 to which RKO purportedly granted to DeLaurentiis, and
13 DeLaurentiis is claiming, the exclusive right to produce
14 a motion picture photoplay based upon either the Old Material
15 or New Material.

16
17 13. Universal plans and desires to produce, sell,
18 distribute and exhibit throughout the world a motion picture
19 photoplay based primarily upon the Old Material contained
20 in the Mystery Magazine serialization or the King Kong novel,
21 and not based upon or utilizing the New Material, if any,
22 contained in the King Kong photoplay. Universal has expended
23 time, money and effort in furtherance of such plans and is
24 actively planning to commence the production of such a
25 photoplay.

26
27 14. By reason of the foregoing facts, an actual
28 and justiciable controversy has arisen and now exists be-
29 tween Universal and the defendants concerning the validity
30 of the Frere renewal copyright and the right of Universal
31 to produce, sell, distribute and exhibit a motion picture
32 photoplay based on the Old Material, in that,

A002039

14.1 Universal contends:

14.1.1 that the alleged Frere renewal
copyright is invalid and void;

14.1.2 that the Mystery Magazine serializa-
tion and the King Kong novel and all the Old
Material contained therein are in the public
domain; and

14.1.3 that Universal may produce, sell,
distribute and exhibit a motion picture photo-
play based primarily on the Old Material contained
in the Mystery Magazine serialization and the
King Kong novel, as long as it does not contain
New Material, if any, from the King Kong photo-
play; and such a motion picture photoplay
produced by Universal will not infringe upon the
claimed rights of defendants, or any of them, in
the King Kong photoplay, or any alleged rights in
the King Kong novel, or any other alleged rights
of defendants.

14.2 Defendants dispute and deny Universal's
contentions and contend, among other things, that any
such motion picture photoplay produced by plaintiff,
even if it is based solely on the Old Material con-
tained in the Mystery Magazine serialization and King
Kong novel, will constitute an infringement of
defendants' alleged rights in the King Kong photoplay
and King Kong novel and alleged copyrights therein.

WHEREFORE, plaintiff prays for judgment against
the defendants, and each of them, as follows:

1. For a declaration that the alleged Frere

1 renewal copyright is invalid and void; that the Mystery
2 Magazine serialization and the King Kong novel and all
3 the Old Material contained therein are in the public domain;
4 and that Universal may produce, sell, distribute and exhibit
5 a motion picture photoplay based primarily on the Old Material
6 contained in the Mystery Magazine serialization and the King
7 Kong novel, as long as it does not contain any New Material
8 from the King Kong photoplay; and such a motion picture photo-
9 play produced by Universal will not infringe upon the claimed
10 right of defendants, or any of them, in the King Kong photo-
11 play, or any alleged rights in the King Kong novel, or any
12 other alleged rights of defendants;

13
14 2. For costs of suit incurred herein; and

15
16 3. For such other and further relief as the
17 Court deems just and proper.

18
19 DATED: October 17, 1975.

20 GANG, TYRE & BROWN
21 BRUCE M. RAMER
22 STANLEY P. GOLD

23 By Stanley P. Gold

24 and

25 ROSENFELD, MEYER & SUSMAN
26 ALLEN E. SUSMAN
27 STEPHEN A. KROFT

28 By Allen E. Susman

29 Attorneys for Plaintiff
30
31
32